

1. **PARTIES**

The Montana Department of Corrections (DEPARTMENT) and **Sam Lemaich (CONTRACTOR)** enter into this Contract (**#08-068-DIR**). The party's names, addresses, and telephone numbers are as follows:

Montana Department of Corrections (DOC)
Director's Office
1539 11th Avenue
PO Box 201301
Helena, MT 59620-1301
(406) 444-3930

Sam Lemaich
2720 Carnoustie Way

Missoula MT 59808
(406) 728-5108

DEPARTMENT AND CONTRACTOR, AS PARTIES TO THIS CONTRACT AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:

2. **DUTIES/RESPONSIBILITIES OF THE CONTRACTOR**

The 2007-2009 Corrections Advisory Council is charged by the governor's executive order (22-2007) with assessing the Department of Corrections infrastructure needs to provide the increased capacity for the growing offender population during the next 10-15 years.

In consideration of the above condition, CONTRACTOR agrees provide the following services:

- a. Become familiar with the executive order (22-2007, attached) and DOC Advisory Council (Council) work plan.
- b. Coordinate activities of the strategic planning committee and its consultant with the work of the council to ensure seamless exchanges of information.
- c. Become familiar and knowledgeable of the work of the strategic planning committee and communicate regularly with Montana State Prison (MSP) Deputy Warden, Ross Swanson; Architecture & Engineering Division Bureau Chief, Jim Whaley; and, the consultant hired to develop a long-term facilities plan for DOC.
- d. Maintain regular contact with council members and key members of the governor's staff (as designated by the DOC contract liaison) to determine dates for council meetings and agenda items.
- e. Work with DOC staff to arrange presentations to the Council on offender population projections and related needs of community corrections and secure care needs.
- f. Work with operators of contracted community corrections programs to develop presentations and issues related to their ability to continue to address DOC's growing need for capacity.
- g. Make all necessary arrangements related to meeting logistics (i.e., meeting location, snacks and lunches, facility tours and respective transportation, etc.)
- h. Develop Council meeting agendas and ensure they are distributed to all interested parties, including the news media, at least one week in advance of each meeting.
- i. Maintain an e-mail list of interested parties and keep them informed of Council activities.
- j. Ensure Council meeting notices are provided to the contract liaison (or designee) for posting on the state's Web-based electronic calendar by DOC staff.
- k. Coordinate all Council-related activities with the Contract liaison and/or his designee.
- l. Review and edit, as necessary, Council meeting summaries before sending to committee members.
- m. Submit the final, approved Council meeting summary to the contract liaison for posting on the DOC web site by DOC staff.

- n. Ensure all materials prepared for and presented at council meetings are provided to the Contract liaison for posting on the DOC web site by DOC staff.

3. COMPENSATION/BILLING

DEPARTMENT shall compensate CONTRACTOR for successful delivery of services, provided pursuant to Section 2, in the following manner:

- A. DEPARTMENT shall pay CONTRACTOR **\$30.00 per hour**, not to exceed **\$5,000.00** (five thousand and 00/100 Dollars) per contract period for the services described herein. This rate is inclusive of all travel and related expenses. In addition, DEPARTMENT will compensate CONTRACTOR for overnight stays (necessary to provide the contracted services) at the state authorized per diem rate, as approved by the Contract liaison.
- B. DEPARTMENT agrees to pay CONTRACTOR within 30 days following receipt of a correct invoice.
- C. DEPARTMENT may withhold payments to CONTRACTOR if CONTRACTOR has not performed in accordance with the terms of this Contract.
- D. The Contract number must be referenced on all invoices and correspondence pertaining to this Contract.

4. AGENCY ASSISTANCE

To the extent possible, CONTRACTOR shall use its own facilities and equipment in providing the services set forth in Section 2. However, the parties recognize that services provided to DEPARTMENT may occur within the confines of a secure correctional facility necessitating the use of DEPARTMENT facilities and equipment including, but not limited to, access to inmate records, work space within a correctional facility, and telephone service (e.g., Montana State Prison and Montana Women's Prison do not allow wireless phones within facility).

5. TIME OF PERFORMANCE

This Contract shall take effect upon receipt of final contract signature and shall terminate on October 31, 2009, unless terminated earlier in accordance with the terms of this Contract.

Upon expiration of this Contract, and in the absence of a new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed.

6. LIAISONS AND NOTICE

- A. Bob Anez, Communications Director, (444-0409) 1539 11th Avenue, Helena MT 59620 or successor serves as DEPARTMENT'S liaison.
- B. Sam Lemaich, (728-5108) or (239-2722), 2720 Carnoustie Way, Missoula MT 59808 or successor serves as CONTRACTOR'S liaison.
- C. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (A) and (B) above, and mailed first-class, postage prepaid. All notices sent via U.S.

Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

7. OWNERSHIP AND PUBLICATION OF MATERIALS

All materials CONTRACTOR develops or utilizes (i.e., reports, spreadsheets, etc.) in performing the services set forth in Section 2 above shall be the sole property of DEPARTMENT.

8. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Neither CONTRACTOR nor its employees are employees of the State. In accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA, Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana. CONTRACTOR shall provide proof of compliance in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and maintain such insurance, exemption, or corporate officer status for the duration of the contract. CONTRACTOR shall submit a copy of all renewals of expired insurance and exemptions to: Department of Corrections, Contracts and Facilities Management Bureau, Attn: Contracts Manager, PO Box 201301, Helena, MT 59620-1301.

9. HOLD HARMLESS AND INDEMNIFICATION

CONTRACTOR agrees to protect, defend, and save the DEPARTMENT, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of CONTRACTOR'S employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omission of CONTRACTOR and/or its agents, employees, representatives, assigns, and subcontractors.

10. INSURANCE

A. **Specific Requirements for Automobile Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$250,000 per occurrence and \$500,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds for automobiles leased, hired, or borrowed by CONTRACTOR.

11. ACCESS AND RETENTION OF RECORDS

CONTRACTOR agrees to provide DEPARTMENT, the Legislative Auditor, or their authorized agents with access to any records necessary to determine Contract compliance (Ref. 18-1-118, MCA). CONTRACTOR agrees to create and retain all records supporting the services rendered and/or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or a third party.

12. PUBLIC INFORMATION

CONTRACTOR recognizes that this Contract may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. DEPARTMENT has a limited ability to assert a privacy interest in the subject matter of the Contract particularly with respect to information which is in the nature of a "trade secret" as the phrase is defined in federal law. In any event, CONTRACTOR agrees to hold DEPARTMENT harmless from any injury caused, in whole or in part, by the review of this agreement by an entity authorized to do so pursuant to Article 2, § 9 of the Montana Constitution.

13. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

CONTRACTOR shall not assign, sell, transfer, subcontract or sublet rights, or delegate duties under this Contract, in whole or in part, without the prior written approval of DEPARTMENT. No such written approval shall relieve CONTRACTOR of any obligation of this Contract and any transferee or subcontractor shall be considered the agent of CONTRACTOR. CONTRACTOR shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

14. AMENDMENTS

All amendments to this Contract shall be in writing and signed by the parties.

15. COMPLIANCE WITH LAWS

CONTRACTOR must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by CONTRACTOR subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, CONTRACTOR agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by persons performing the Contract.

16. TERMINATION AND DEFAULT

- A. DEPARTMENT may, by written notice to CONTRACTOR, terminate this Contract in whole or in part at any time CONTRACTOR fails to perform as required in this Contract.
- B. Either party may terminate this Contract without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the Contract shall provide written notice to the other, which notice will establish a termination date not less than 30 days from the date of such notice. The termination of this Contract shall not limit any party's pursuit of remedies provided in this Contract or otherwise available under the laws of the State of Montana.
- C. DEPARTMENT, at its sole discretion, may, without 30 days notice, terminate or reduce the scope of this Contract if available funding is reduced for any reason.
- D. Failure on the part of either party to perform the provisions of this Contract constitutes default. Default may result in pursuit of a remedy for breach of Contract including, but not limited to, monetary damages or specific performance.

17. **CHOICE OF LAW AND VENUE**

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA).

18. **LICENSURE**

CONTRACTOR agrees to provide copies of current licenses and certifications that register CONTRACTOR and any associates performing under this Contract.

19. **INTEGRATION**

This Contract contains the entire agreement between the parties and no statement, promises, or inducements made by either party or agents thereof, which are not contained in the written Contract, shall be binding or valid. This Contract shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the Contract.

20. **SEVERABILITY**

A declaration by any court, or any other binding legal source, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.

21. **COMPLETED CONTRACT**

DEPARTMENT cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Contracts Management Bureau, PO Box 201301, 1539 11th Avenue, Helena, MT 59620-1301.

SIGNATURE

DEPARTMENT



Mike Ferriter, Director

5-13-08
Date


CONTRACTOR



Sam Lemaich

5-14-08
Date

Approved for Legal Content by:



Legal Counsel
Department of Corrections

5/13/08
Date

ATTACHMENT
EXECUTIVE ORDER 22-2007
Available as a .pdf only

STATE OF MONTANA
OFFICE OF THE GOVERNOR
Executive Order No. 22-2007

EXECUTIVE ORDER EXTENDING THE CORRECTIONS ADVISORY COUNCIL WITHIN THE
DEPARTMENT OF CORRECTIONS, AS AMENDED

WHEREAS, Montana expects to continue experiencing a growth in the total offender population of about 6 percent annually into the second decade of the twenty-first century; and

WHEREAS, about 80 percent of Montana offenders are supervised and managed outside of prisons, compared with approximately 77 percent four years ago; and

WHEREAS, the prison population in Montana is expected to grow at a slower rate than the offender population in alternative programs and community corrections programs; and

WHEREAS, the probation and parole caseload grew by a rate of about two offenders per day during fiscal year 2007; and

WHEREAS, the demand for increased emphasis on prison alternative programs that focus on treatment services for mentally ill and drug-addicted offenders is expected to continue rising, and will require new facilities and programs to be established to meet that need; and

WHEREAS, strategic planning to ensure that the Department of Corrections has adequate capacity to handle the growing number of offenders in the future must be undertaken so that this growth can be managed in the most orderly and cost-effective fashion possible to benefit Montana taxpayers, offenders and those working in the corrections system; and

WHEREAS, this Administration has established corrections principles emphasizing public safety, community services, rehabilitation and caring for Montana offenders in-state, and timely planning for the anticipated growth in the offender population should be undertaken to achieve these principles.

NOW, THEREFORE, I, Brian Schweitzer, Governor of the State of Montana, by virtue of the authority vested in me under the laws and the Constitution of the State of Montana, do hereby extend, as amended, the Corrections Advisory Council within the Department of Corrections.

PURPOSE AND DUTIES

The Corrections Advisory Council shall:

- A. Analyze current adult and juvenile offender population trends and develop long-term projections;
- B. Determine the potential future infrastructure needs necessary to increase capacity within the following community corrections and prison alternatives programs in a way that keeps pace with anticipated growth during the next 10-15 years:
 1. probation and parole
 2. juvenile offenders
 3. prerelease centers

4. substance-abuse treatment
5. intensive supervision
6. mental health treatment
7. revocation and sanction.

C. Analyze the existing state-private partnerships being used to provide capacity in the corrections system and determine the ability of Montana private, nonprofit corporations to continue to fulfill this cooperative role with the State;

D. Review and analyze the existing infrastructure at Montana State Prison and the Montana Women's Prison and make recommendations on future needs; and

E. Report to the Governor the results of its work and the recommendations it develops for managing Montana's growing offender population.

COMPOSITION AND TERMS OF APPOINTMENT

The Council shall consist of at least 11 members, appointed by and serving at the pleasure of the Governor. The Governor shall designate ~~one member to serve as a Chair or Co-Chairs~~. Additional non-voting, ex-officio members may be appointed by the Governor. Their names and addresses of the Council members will be submitted by separate letter to the Secretary of State and the Montana Department of Corrections.

The Council is attached to the Department of Corrections for administrative purposes.

COMPENSATION AND TRAVEL

Council members eligible for compensation under § 2-15-122(5), MCA, shall be compensated in an amount to be determined by the Department head, not to exceed \$50 for each day in which the member is actually and necessarily engaged in the performance of Council duties. All Council members shall be reimbursed for travel expenses pursuant to § 2-15-122(5), MCA.

TERMINATION OF PRIOR EXECUTIVE ORDER

All prior Executive Orders relating to the Corrections Advisory Council are hereby superseded by this Order.

DURATION

The Corrections Advisory Council shall exist for two years from the effective date of this Order. This Order is effective immediately.

GIVEN under my hand and the Great Seal of the state of Montana this ____ day of _____, 2007.

BRIAN SCHWEITZER, Governor

Attest:

BRAD JOHNSON, Secretary of State